



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Service Ventures, Inc.
File: B-233318
Date: February 15, 1989

DIGEST

1. Agency properly awarded contract to higher-cost, technically superior offeror where award on that basis was consistent with solicitation's evaluation criteria and the agency reasonably found that the difference in technical merit outweighed the cost difference.
2. Where request for proposals specifically states that offerors' proposed employee incentive program is the second most important evaluation factor and that cost is the least important factor, protest that consideration of incentive plan is improper because it constitutes an unnecessary additional cost is untimely when filed after the closing date for receipt of proposals.
3. An agency need not specifically identify detailed aspects of the evaluation criteria as long as they are reasonably related to the announced criteria.

DECISION

Service Ventures, Inc. (SVI), protests the award of a firm, fixed-price contract to RAMS Specialized Security Services, Inc., the incumbent contractor, for guard services at the Central Oregon Test and Evaluation Facility under Corps of Engineers request for proposals (RFP) No. DACA67-88-R-0019. SVI contends that there is no reasonable basis for rejecting its substantially lower-priced, technically acceptable proposal in favor of the incumbent's. SVI objects to the agency's evaluation of its proposal and specifically to the agency's low scoring of its technical/management proposal and lack of meaningful discussions. SVI further contends that the agency improperly applied unannounced evaluation factors. We deny the protest in part and dismiss it in part.

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The solicitation sought technical and price proposals for a 9-month base period and four 1-year option periods. The evaluation factors for award were, in descending order of importance: (1) demonstrated prior related experience; (2) incentive program; (3) personnel; (4) firm's technical systems knowledge and experience; (4) technical performance; (5) management/organization; and (6) price, including options. The contract was to be awarded to the offeror whose proposal was found to be most advantageous to the government, and the RFP reserved the right to award to other than the lowest-priced offeror.

The Army received eight offers, evaluated them, held discussions with the five offerors in the competitive range, and requested best and final offers (BAFOs). The agency scored both the technical/management and the price proposals. Of the five firms submitting BAFOs, RAMS submitted both the highest ranked technical/management proposal and the highest priced proposal (\$3,039,353), while SVI submitted the second highest ranked technical/management proposal and the third highest priced proposal (\$2,662,168). However, in total points (combined technical/management and price scores) the ranking of the three highest rated proposals was as follows:

RANK	FIRM	TOTAL COMBINED SCORE	PRICE
1	RAMS	2,393	\$3,039,353
2	THIRD FIRM	1,951	2,514,161
3	SVI	1,947	2,662,168

RAMS was ranked first with the highest combined score and SVI third, only 4 points behind the second ranked offeror. The Corps determined that RAMS' technical superiority was worth the additional cost, and awarded RAMS the contract on October 14, 1988. By letter of October 19, the Corps notified SVI that the contract had been awarded to RAMS. SVI filed its protest in our Office on October 24.

The Corps' notice of award advised SVI that it was not selected for award for three primary reasons: (1) its proposal referenced current contracts with the Navy and the Army that "did not require security clearances;" (2) its incentive program evidenced a lack of understanding because it was limited to three elements (base pay in line with the minimum wage standards, a 401(k) retirement plan, and an annual employee cash bonus) and lacked both a general wage increase during the life of the contract and shift

differential pay; and (3) SVI's plan to staff the contract by hiring the existing guards was only considered only adequate. SVI urges that these three reasons for its lower score and nonselection are factually insupportable and unreasonable. Essentially, SVI's argues that a correct evaluation would have given its proposal a higher technical rating, removing the Corps' justification for an award to RAMS at the higher price.

In a negotiated procurement, there is no requirement that the award be made on the basis of the lowest price, unless the solicitation so specifies; the contracting agency has discretion to select a higher-priced, higher-rated technical proposal if doing so reasonably is deemed worth the extra cost to the government. DWS, Inc., B-229963, Mar. 17, 1988, 88-1 CPD ¶ 283. Here, the RFP clearly provided that the technical and management considerations were more important than price and that award might be made to other than the low-price offeror, and, thus, the Corps was not required to award on the basis of the lowest-priced proposal.

Our Office will not question an agency's determination that the technical merit of a superior proposal is worth the extra cost in relation to a lower-rated offer unless the protester shows that the agency's judgment is unreasonable. Dalfi, Inc., B-224248, Jan. 7, 1987, 87-1 CPD ¶ 24. In this regard, our Office will not substitute its judgment for that of the agency evaluators. Rather, we will examine the record to determine whether the evaluators' judgments were reasonable and in accordance with the announced evaluation criteria and whether the agency violated any procurement statutes or regulations. The protester has the burden of proving that the agency's evaluation was unreasonable. DWS, Inc., B-229963, supra.

Concerning the Corps' first criticism of SVI's proposal, that the two current contracts referenced by SVI did not require security clearances, the protester contends that the agency did not understand the statement of its prior experience presented in its proposal and that the agency should have identified and discussed the perceived deficiency with SVI. Moreover, SVI objects to the agency focusing its evaluation of prior experience on top secret work as opposed to classified work in general, contending that, from its point of view as a security guard contractor reviewing job applicants for clearance potential, secret and top secret security clearances are equivalent.

In this regard the RFP states as follows on its cover sheet:

"PRIOR TO PERFORMANCE: The successful contractor shall be required to possess a Top Secret Security Clearance. The personnel performing work on the contract shall require a Top Secret/FCL Clearance."

Since the RFP specifically required guards for work at a top secret facility and stated that the guards must have top secret clearances, we think the evaluators could reasonably focus on a firm's previous top secret experience as an indication of better value deserving a higher score than lesser experience such as secret or confidential clearances. For the government, the process of clearing a guard for a top secret clearance is more time-consuming and expensive than processing a secret clearance principally because of the greater scope and depth of the investigation. Moreover, the government must continue to incur investigatory costs until the contractor provides a complete roster of acceptable candidates. We find it reasonable for the Corps to attempt to minimize its investigatory expenses through the use of firms with the demonstrated ability to locate quality top secret clearance applicants for guard positions. Further, we find no merit to SVI's argument that prior experience providing acceptable secret clearance applicants equates with experience providing top secret applicants, because a secret applicant is subject to substantially less investigatory review and may receive a secret clearance when application for a top secret clearance would have been denied. Consequently, we find the agency properly focused its efforts on selecting a contractor with a proven record of finding acceptable top secret applicants and properly evaluated previous experience in terms of previous top secret experience.

SVI next suggests that the Army should have discussed the perceived deficiency related to referenced contracts not requiring security clearances. We disagree.

The requirement for discussions with offerors whose proposals are in the competitive range includes advising them of deficiencies and affording them an opportunity to submit revised proposals. However, agencies are not required to discuss every element of a technically acceptable, competitive range proposal that has received less than the maximum possible score. Automation Management Consultants, Inc., B-231540, Aug. 12, 1988, 88-2 CPD ¶ 145; Bank Street College of Education, 63 Comp. Gen. 393 (1984), 84-1 CPD ¶ 607.

SVI's proposal referenced two current government contracts, one Navy and one Army. Regarding its Navy contract, SVI merely stated that it was awarded in part because SVI could quickly process required security clearances. No further explanation was provided. As regards the Army contract, the proposal stated that SVI's guards

"escort maintenance personnel in restricted areas, inspect and retrieve any classified material at exits to special restricted areas, [and] control entry/exit of . . . classified material to and from the Nuclear Weapons Employment Division area."

However, SVI's proposal did not state the level of security involved.

The agency report evidences a degree of confusion regarding SVI's prior experience with security clearances. For example, the source selection document states in part that "there is no indication that secret or top secret security clearance was required on these projects." Notwithstanding this comment and the statement contained in the notice of award that SVI's Navy and Army contracts "did not require security clearances," the Corps reported to our Office that the panel "did in fact determine and consider in its scoring, the fact that SVI had personnel with 'Secret' clearances." The Corps advised our Office that the source selection document was prepared by the contract negotiator on the basis of the evaluators' score sheets which focused on the apparent lack of prior top secret experience in SVI's proposal. It is the agency's position that the protester's relatively high score on demonstrated prior related experience (out of 10 possible points, SVI received scores of 7, 7, and 4, while RAMS received scores of 9, 8, and 8) indicates that the evaluators had evaluated on the basis that the work described in SVI's proposal entailed secret clearance.

Our review of the individual evaluation score sheets shows no evidence that the protester was downgraded for lack of secret clearance experience. For example, one evaluator expressly remarked only on the absence of top secret experience in SVI's proposal, but never cited a lack of secret experience as a deficiency, and still gave the firm a score of 7. Furthermore, the score sheets show that the evaluators were aware of the relevance of the firm's experience on its current Navy and Army contracts, but generally were concerned by the short duration of the firm's corporate

experience as contrasted with the greater personal experience of the firm's president.

In our view, the evaluators' score sheets--on which both the source selection document and the notice of award letter were based--show that SVI was given a lower score relative to the awardee because of SVI's lack of top secret experience and limited corporate experience, not because the evaluators were unaware that SVI's prior contracts involved secret clearances. Further, even if some of the evaluators were unaware that SVI's prior contracts involved secret clearances, we do not think that SVI was prejudiced by the agency's failure to raise the issue in discussions. Given that the agency's emphasis properly was on top secret rather than secret experience, and since SVI's score under the prior related experience criterion already was relatively close to the score given the awardee--which, unlike SVI, had top secret experience--we see no basis to assume that SVI's score would have increased even if the issue had been raised in discussions. Moreover, discussion of SVI's lack of top secret experience would have served no purpose as SVI could not change the nature of its two current contracts and consequently the nature of the experience derived from them.

SVI also asserts that it was unreasonable for the agency to downgrade its proposal for failing to provide more extensive employee incentives beyond the two offered in its initial proposal, because in SVI's view additional incentives are unnecessary to retain personnel. Following receipt of the agency report, SVI elaborated on its argument, urging that requiring additional incentives improperly forces the government to pay a higher price without a corresponding benefit; the use of incentives violates the price adjustment clause's warranty provision; and application of the incentive program favors higher priced proposals and diminishes the role of cost and other technical factors in the procurement.

The agency reports that SVI's lower ranking ultimately turned on its incentive plan. The incentive plan was the second most important evaluation factor. The agency previously had experienced serious problems retaining qualified personnel at the contract-specified Department of Labor (DOL) wage rates. While the RFP did not specify any particular type of desired incentive plan, the RFP warned offerors that an incentive program was an important and highly weighted criterion

"designed to solicit detailed cost data on how the firm would reimburse, and more importantly, retain

employees (guards) having a top secret security clearance."

SVI proposed two incentives (an annual cash payment to each employee and an annual lump sum deposit to a tax-deferred 401(k) retirement account) which together constituted a 4-percent bonus over the potential 5-year term of the contract. During discussions the agency expressed concerns regarding the efficacy of SVI's proposed program stating that "[i]t is not clearly evident . . . how your Incentive Bonus plan would maintain a highly qualified staff of cleared personnel." SVI responded by noting that the contract-specified DOL wage rate exceeded the highest comparable local wage for guards by 57 percent (\$5.72 vs. \$9.00), and the DOL wage rate included fringe benefits exceeding those paid by commercial businesses in the area. SVI expressed confidence that the lack of high paying alternative commercial jobs, the popularity of tax-deferred 401(k) programs, and the annual cash bonus would attract and retain a quality workforce. The agency evaluators believed SVI's incentive plan was adequate, but not as good as the type of plan the Corps desired, and gave SVI fewer points, because they found the SVI incentive plan only minimally acceptable for insuring a low turnover rate in the guard force, an important factor affecting the security of the facility. Consequently, SVI received so few points in the evaluation of its incentive plan that its proposal became less attractive than RAMS' despite its lower price.

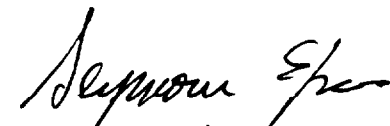
The record before us provides no basis to conclude that the evaluators acted unreasonably in applying the incentive program evaluation factor to SVI's proposal. Obviously, the protester and the agency disagree over what incentives are necessary to retain qualified personnel; however, SVI's disagreement with the agency's evaluation does not render the evaluation unreasonable. National Capital Medical Foundation, Inc., B-215303.5, June 4, 1985, 85-1 CPD ¶ 637.

To the extent that SVI objects to the agency's inclusion of the incentive plan in the evaluation scheme because it constitutes an unnecessary additional cost, reflects more than the government's minimum needs, or is otherwise objectionable, the argument is untimely. A protest of an alleged solicitation impropriety which is apparent prior to the closing date for receipt of initial proposals must be filed prior to that closing date in accord with our Bid Protest Regulations. 4 C.F.R. § 21.2 (a)(1) (1988). The agency's heavy emphasis on the incentive program was apparent from the face of the solicitation, so SVI should have protested the matter prior to the date for receipt of initial proposals. Raven Services Corp., B-231639, Aug. 23, 1988, 88-2 CPD ¶ 173. Consequently, we dismiss this aspect of the protest.

Finally, SVI contends that nothing in the solicitation indicated to it that it would be evaluated either on its experience in obtaining security clearances or on its presentation of a plan to hire all of the incumbent's personnel. In response, the Corps urges that both questioned matters are proper subcriteria that logically follow from the personnel evaluation factor and the RFP requirement that the guards could not begin work until they had top secret clearances. The Corps reports that it was concerned with how and where SVI would obtain the required personnel to provide the service.

Our concern in considering an objection to the use of an evaluation factor not specifically stated in the RFP is whether it is so reasonably related to the specified criteria that the correlation is sufficient to put offerors on notice of the additional criteria to be applied. Consolidated Group, B-220050, Jan. 9, 1986, 86-1 CPD ¶ 21. Applying this standard, we find no basis for objecting to the evaluation of either SVI's experience in obtaining security clearances or SVI's plan to recruit from the incumbent's personnel because SVI's proposal plainly stated that it intended to hire an entirely new guard force (from the project manager/guard captain on down) and it considered the incumbent's already cleared employees a potential source, but not the only source. In these circumstances, we believe it was proper for the agency to consider the likelihood of SVI successfully recruiting that group. Moreover, we also find it was appropriate for the Corps to evaluate the protester's ability to obtain clearances for previously uncleared personnel in case SVI encountered difficulties in recruiting from the incumbent's already cleared personnel. In either case, the factors considered clearly relate to the protester's proposed approach to providing the required personnel and its ability to perform the contract at a top secret facility. Id.; see also Technical Services Corp., 64 Comp. Gen. 245 (1985), 85-1 CPD ¶ 152.

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel